

Affidavit from James Allen Gardner #177263

CASE No: 2015-000286

I, James Gardner #177263; is the appellant in the above mentioned case. I am also an inmate within the South Carolina Department of Corrections located at McCormick Correctional Institution; 386 Redemption Way, 29899.

Appellant submits this affidavit for reasons of support to the enclosed Pro-Se Brief to which I am contending that I HAVE BEEN WRONGFULLY CONVICTED AND HELD UNLAWFULLY.

Appellant contends that because of the error and misconduct of the police department and that of the trial Judge, HE has NOT RECEIVED A FAIR TRIAL.

First, The Police Department violated Article 6. "USING A FIRE-ARM WHILE UNDER THE INFLUENCE OF ALCOHOL OR A CONTROLLED SUBSTANCE; Section 23-31-400. Definitions; unlawful use of firearm; violations (A) 1-2, (B), (C), and (D). History: 1996 Act No. 46A, Section 2. And, Section 23-31-410. Blood and urine testing. (A), (B), (C), (D), and (E). History: 1996 Act No. 46A, Section 2.

Second, THE TRIAL JUDGE error in allowing A video taped statement into trial. EVEN though it may appear that the statement was voluntarily given verbally, it was without consent nor was the "subject" at that time was told of the recording. It is without question that the appellant never signed a waiver of right form. THE COURT allowed this statement after repeatedly questioning the appellant of his Miranda rights. Appellant should have BEEN

15:45 hours and the TIME arrive on scene, was 15:48 hours.

The departure "ENDING" TIME was 16:12 hours.

The incident report here, states that subject was NOT on alcohol or drugs nor was ANYONE arrested at the scene.

Also noted is the Varnville police department report was filed (10) Ten Months after the incident occurred, however dated the day of incident.

The Hampton County police department incident report plainly states that it was unknown whether suspect was using alcohol or drugs.

Reporting officer stated that He along with Lt. Hernandez responded to the shooting in Varnville with Major Anderson.

They spoke with the Two women callers "Together", He stated that this was when they spotted the suspect with Two high powered Rifles, that when He stated that the suspect stated, "Shoot ME!", Go ahead and shoot me you mother fuckers, shoot me, I want to die. No shots were fired, He claimed that the suspect pointed his rifle towards the opposite direction, alleging that the suspect was aiming at Major Anderson. He stated that Major Anderson began shooting at suspect. He then allege suspect then shooting at Major Anderson. It was then when He stated Lt.

Hernandez moved in to apprehend the suspect. They said that they recovered a rifle that they allege had jammed with (8) eight rounds still inside the rifle. It was later found by Lt. Hernandez that the second rifle was thrown in the back of the suspects pick up during the shooting because it was empty.

In a supplemental #1 statement H9 01/27/2013 at 08:02 hours, Lt. Hernandez stated the same, however no mention of Major Anderson on the scene until later on. He said that he observed

Two black females running away from the house, The gunman dropped one of his rifles and pointed the other one in their direction and shouted, "Go ahead, shoot me!, shoot me you Mother fuckers, shoot me!, I want to die, He stated suspect refused and picked up his other rifle and went to the rear of the house. Moments later suspect was cuffed.

Appellant contends that (1). He stated one rifle was removed. The second was in the back of suspects truck, That is not possible because they "the officers" had just stated that the suspect had two rifles, one in each hand. The suspect never went back to his truck. (2) one officer stated two women walked towards them, the other stated two black females running from the house. - which one was it? later in the statement, there is no mention of a female being shot.

In another statement by VPD Chief Tyrone Smith, He stated upon arrival the suspect was standing in the front with "A" rifle in both arms. He stated that gun fire was exchanged, no mention of anyone being shot however at that same time the suspect was arrested, one rifle recovered, another rifle found in back of the suspects truck.

This statement at this time by chief T. Smith was written on at 10:51 am, Almost a year later after this allege incident. Here the statement states that a female being shot in the hip. Now there is only one female, the other is nowhere to be found; They were just right there, "together", Here he states that a Lt. Washington is on the scene while securing the female in the back seat of the patrol car questioning the victim, They looked up and the suspect was pointing the rifle at Lt. Washington. They manage to get in their individual patrol cars. The narrative later states that Lt. Washington started hearing gunshots and saw deputy Rivers of the Hampton County sheriff's office making his way down the fence line. He then heard deputy Rivers commanding subject to drop his

weapon, deputy Rivers then started firing his weapon at subject and later yelled that subject was hit, moments later he saw Lt. Hernandez and Sgt. Rosica of the Hampton police department walking with subject. Subject was already cuffed. The officer stated that he had fired his weapon at subject and then gave the command to drop his weapon.

Once the subject was transferred to the Varnville Police Department, and read his Miranda, he then interviewed subject in the presence of Lt. Hernandez.

After Capt. Russell of the Hampton County Sheriff's Office conducted a (GSR) Kit on subject, subject refused to allow Capt. Russell to collect the evidence of the GSR Kit however the officer Smith continued to collect the evidence. Subject was then transferred to the Hampton Detention Center by himself. He then went to the Hampton Regional Hospital to talk with the victim (Marian Walden). The victim stated that she was at a neighbor's house and her had walked down there when they encountered the subject.

Appellant here, brings forth unanswered questions such as:

- (1) Where was the victim shot when she was hit?
- (2) Where is the bullet?
- (3) What weapon did the bullet come from?
- (4) How is it that the two victims got separated?
- (5) Why did she started shooting first and later command the subject to drop his weapon?
- (6) Throughout all these alleged shots being exchanged, why had there not been any gun shell casing recovered or mention to have been?
- (7) If the victim was shot in the house, outside of the house, where is the bullet casing if indeed the shot came from the subject?
- (8) Where was the neighbor that own the house?
- (9) Why was there no statement made by the neighbor?
- (10) Victim stated she ran to a church for help however there is no

Such proof to confirm her allegations

- (11) The law states that when a officer fires his or her weapon, there MUST be a sled investigation. Why was there not a sled investigation conducted?
- (12) Where are the statements from Deputy Rivers and Sgt. Brooker?
- (13) Deputy Rivers incident report stated that no drugs or alcohol was consumed by subject, How could he prove such a statement?
- (14) If the subject was shot, why was he never transferred to the hospital?
- (15) Which weapon did the shot come from that took down the subject?
- (16) The subject stated that he was drunk, had drunk a bottle of Crown Royal, Chief Smith testified that they found the bottle of Crown "vic" Royal at the scene, he stated that the subject had a few drinks. He questioned the subject and subject told him, yeah, I drunk that and more. Chief Smith testified that appellant had no odor of alcohol and did not appear drunk. (R. pg. 27, line 20 - pg. 28, lines 1-16).
- (17) Appellant contends that his rights to Article 6, sections 23-31-410, Blood and urines testing were violated because it plainly states that, "A person who uses a firearm within this state SHALL submit to a sled-approved breath test to determine the alcohol content of the blood and to a urines test to detect the presence of a controlled substance if there is probable cause to believe that the person was using a firearm while under the influence of alcohol or a controlled substance or if the person is arrested lawfully for an offense, allegedly committed while he was using a firearm while under the influence of alcohol or a controlled substance. The breath or urines test MUST be administered at the request of a law enforcement officer who has probable cause to believe the person was using the firearm while under the influence of alcohol or a controlled substance."

Appellant now contends that the law enforcement officers violated Article 6, Sections 23-31-400 and Sections 23-31-410, and the

trial judge "CANNOT" ASSUME that appellant was not under the influence some Two (2) years later at trial.

Appellant contends that he should have received an evaluation to his mental state of mind after the incident occurred and before any questioning and he was not allowed one which would have proved that he was not in his right state of mind, before, during or after the incident in question occurred, The burden is solely on the state.

Appellant contends that the trial judge "CANNOT" determine the state of mind of appellant by a conference room video showing the appellant being questioned and should that video be allowed at trial. here the judge abused his authority by ignoring these facts and allowing the trial to go forward.

Appellant contends that he was not advised of such test, nor was he allowed to give such said test(s). The arresting officer should have requested a breath or urine test of the person arrested as set forth in section 23-31-410(B).

Appellant further contends that the (4) four counts of weapon charges against (4) four law enforcement officers were dismissed by the State prosecutor "Tameka Legette" because of the inconsistencies and the contradictions on/in the law enforcement officers statements, however, no weapons/pointing and presenting firearms at a person charges were brought against him for none of the alleged victims where as he was charged and convicted of Attempted Murder.

Lastly, The indictments itself does not have the proper elements in place and the clerk of court should have taken notice before processing those indictments.

All of the indictments served on appellant are not murder, Each of the Attempted Murder were true. Billed as well as an indictment for weapons/pass. weapon during violent crime.

Appellant contends that trial counsel should have made a motion to have these indictments set aside and dismissed.

The indictments are written in plain language stating that in the State of South Carolina: County of Hampton, At a Court of General Sessions, Convened on October 30, 2014, the Grand Jurors of Hampton County present upon their oath: An indictment for such charge has no room for error. It states that the Grand Jurors convened on October 30, 2014, however Each indictment shows that the indictments were prepared and ready in the year of 2013. Each indictments plainly reads:

2013-GS-25-00073; 2013-GS-25-00075; 2013-GS-25-00079; and 2013-GS-25-00080.

Appellants arrest warrant states the same on each of their docket numbers. Had the indictments been; enhance, up graded, it should have not read the above. These are all faulty indictments.

Appellants contends that the State's Exhibit #22 - DVD of defendants "redacted statement" should not have been admitted into trial as evidence because appellant had no knowledge of the recording. we did not sign a consent form to it being recorded.

Sincerely Submitted,

James A. [Signature] #177263

South Carolina Court of Appeals

**RECEIVED**

December 9, 2015

DEC 11 2015

SC Court of Appeals

Jenny Abbott Kitchings, Clerk  
Post Office Box 11629  
Columbia, South Carolina, 29211

Re: The State v. James Gardner  
Appellant Case No: 2015-000286

Dear Mrs. Kitchings ;

Please note that I have received a letter from your office on  
November 30<sup>th</sup>, 2015 in reference to the brief my appointed counsel  
had filed and the 45 day notice to file a Pro-se Brief.

Enclosed, please find appellants pro-se brief and a copy of  
an Affidavit in support of the said brief.

In this brief, I have submitted all facts as to why this appeal  
should not be dismissed and to show the court that my Anders  
brief contains merit that needs to be taken into account.

Sincerely,

James A. Linder #177263  
McCormick Corr. Institution  
386 Redemption Way  
McCormick, South Carolina  
29899

THE SOUTH CAROLINA COURT OF APPEALS  
Appellants Pro-se Brief in the Case of  
THE STATE v. JAMES GARDNER; CASE NO: 2015-000286

IN reference to the Anders Brief of Appellants Appellate  
Defender; KATHRINE H. HUDGINS of the South Carolina  
Commission on Indigent Defense, Division of Appellant  
Defense.

## STATEMENT OF ISSUE ON Appeal

Did the trial judge err in finding that Appellant's statement to police was made freely and voluntarily when there was evidence that Appellant consumed a bottle of Crown Royal and More prior to giving the statement?

## Argument

The trial judge erred in finding that Appellant's statement to police was made freely and voluntarily when there was evidence that Appellant consumed a bottle of Crown Royal and More prior to giving the statement.

The Appellant agrees with the conclusion in the submitted Anders Brief that based on the above argument, Appellant's convictions and sentences should be reversed and the case remanded for a new trial.

The Appellant contends and will show several parts or in whole of inconsistencies in the officers statements as well as several contradictions in the officers statements.

Hampton County Sheriffs office incident Report states that the suspect was not arrested at the scene, nor was it known if the suspect was on alcohol or drugs.

The time period plainly shows that police arrive at the scene at 1530 hours, incident was over at 1543 hours.

Dispatch time begin at 1543 hours and the time arrive on the scene was 1546 hours. The departure time was 1800 hours.

Varnville police department incident Report states that the time period plainly shows arrival on scene was at 1500 hours. The incident was over at 1612 hours. Dispatch time begin at

verbally informed that the statement he was about to make is in fact being recorded and is subject to be used against him in court.

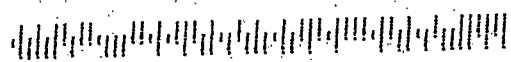
Appellant has stated that even then, HE might have still made the statement because he was not in his right state of mind having consumed and whole bottle of Crown Royal and more. The conduct of the trial judge should not be excused, The trial Judge showed an abuse of discretion which could have had a different outcome at trial.

It is unfounded to witness and hear of a human being yelling out that "HE WANTS TO DIE, SHOUT ME!", or THAT HE WANTS TO KILL SOMEBODY AND NOT RECEIVE SOME TYPE OF EVALUATION TO DETERMINE HIS/HER STATE OF MIND, such actions towards professional individuals as veteran police officers or a trial judge, this should NOT and CANNOT be ignored.

*s/James O. Seader* #177263  
Pro-Se Appellant

SWORN TO and Prescribed Before Me  
This 9<sup>th</sup> day of December 2015.  
*Michael Caruane*  
Notary Public for South Carolina  
MY COMMISSION EXPIRES: July 9, 2025.

Mr. Jam  
McCorm



386 Redemption Way  
McCormick, South Carolina, 29899



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